

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1873.—Ordered to be printed.

Mr. MORTON, from the Committee on Privileges and Elections, sub-
the following

REPORT:

On the 11th day of May, 1872, the Senate adopted the following resolution:

Resolved, That the Committee on Privileges and Elections be authorized to investigate the election of Senator S. C. Pomeroy, by the legislature of Kansas, in 1867, and the election of Senator Alexander Caldwell in 1871; that the committee have power to send for persons and papers; that the chairman, or acting chairman, of said committee, or any sub-committee thereof, have power to administer oaths; and that the committee be authorized to sit in Washington, or elsewhere, during the session of Congress and in vacation.

In obedience to this resolution the committee on Privileges and Elections have had under consideration the election of Alexander Caldwell to the Senate of the United States, in January, 1871, have taken testimony, and beg leave to submit the following report:

It is testified by Mr. Len. T. Smith, a former business partner of Mr. Caldwell, his active friend at the time of his election and during this investigation, that he made an agreement with Thomas Carney, of Leavenworth, by which, in consideration that Mr. Carney should not be a candidate for United States Senator before the legislature of Kansas, and should give his influence and support for Mr. Caldwell, Mr. Caldwell should pay him the sum of \$15,000, for which amount notes were given, and afterward paid, at the same time taking from Mr. Carney a written instrument, in which he pledged himself, in the most solemn manner, not to be a candidate for the office of Senator in the approaching election.

This instrument is in the words following:

I hereby agree that I will not under any condition of circumstances be a candidate for the United States Senate in the year 1871, without the written consent of A. Caldwell, and in case I do, to forfeit my word of honor hereby pledged. I further agree and bind myself to forfeit the sum of \$15,000, and authorize the publication of this agreement.

THOS. CARNEY.

TOPEKA, January 13, 1871.

Mr. Smith's testimony is fully corroborated by that of Mr. Carney, who admits the execution of the paper, the making of the arrangement, the taking of the notes, and the subsequent receipt of the money. The notes for the money were signed by Mr. Smith, but paid by Mr. Caldwell; and one of them, for five thousand dollars, was made contingent upon Mr. Caldwell's election. The substance of the whole agreement, only a part of which was expressed in the writing, was that Mr. Carney should not be a candidate for the Senate against Mr.

Caldwell, that he should use his influence for Mr. Caldwell, go to Topeka, meet the legislature, and do all he could to secure his election.

The first question to be considered is: Was this arrangement corrupt? was it the use of corrupt means, on the part of Mr. Caldwell, to procure his election? The committee are of opinion that it was corrupt; was against public policy; was demoralizing in its character; directly contributed to destroy the purity and freedom of election, and not to be tolerated by the Senate of the United States as a means of procuring a seat in that body.

To understand the full nature of the transaction, we must consider the character and position of Mr. Carney. He had been a governor of Kansas; he had once been elected a Senator of the United States by the legislature of that State, but the election was premature, being at the wrong session; he had been a candidate for the Senate at another time, and had come within ten votes of being elected. He was well known throughout the State, had a large body of active friends, many of whom were warmly devoted to his political fortunes. His being a candidate would greatly endanger the success of Mr. Caldwell, if not certain to result in his defeat. He was from the same city with Mr. Caldwell, and his candidacy would be the more dangerous on that account. When Mr. Caldwell agreed to give him \$15,000 under this arrangement, it was an attempt to purchase the votes of the friends of Mr. Carney. He doubtless expected that Mr. Carney, through his influence over his friends, could bring them over to his support. They would naturally become friends to the man with whom Mr. Carney was friendly. It was, at least, a tacit part of this arrangement that Mr. Carney should conceal the mercenary part of the transaction, and place his withdrawal from the canvass and his support of Mr. Caldwell upon personal and political considerations that were honorable to himself, and would be attractive to his friends; and this he did. Mr. Carney went to Topeka before the senatorial election and remained there until it was over, working industriously for Mr. Caldwell, and exerting all his personal and political influence to secure his election. Looking at the transaction in its real character, it was a sale, upon the part of Mr. Carney, of the votes of his personal and political friends in the legislature, to be delivered by him to Mr. Caldwell, as far as possible. If it were legitimate for Mr. Caldwell to buy off Mr. Carney as a candidate, it was equally legitimate to buy off all the other candidates, and have the field to himself, by which he would exert a *quasi* coercion upon the members of the legislature to vote for him, having no other candidate to vote for. It was an attempt to buy the votes of members of the legislature, not by bribing them directly, but through the manipulations of another. The purchase-money was not to go to them, but to Mr. Carney, who was to sell and deliver them without their knowledge. That Mr. Caldwell did procure the votes of members of the legislature, friends of Mr. Carney, ignorant of the fact that Mr. Carney was making merchandise of his political character and influence, and of their friendship for him, for which he was to receive a large sum of money, the evidence leaves no reasonable doubt.

Buying off opposing candidates, and in that way securing the votes of all or the most of their friends, is in effect buying the office. It recognizes candidacy for office as a merchantable commodity, a thing having a money value, and is as destructive to the purity and freedom of elections as the direct bribery of members of the legislature.

A candidate for the Senate, without strength or merit, may, by purchasing the influence and support of all or a part of his competitors, and

withdrawing them from the canvass, succeed in an election, thus, not only committing a fraud upon the friends of the candidates who were purchased off, but a greater fraud upon the people of the State who may be thus saddled with a representative in the Senate of the United States about whom they know little, for whom they care nothing, and who possesses little ability to represent their interests.

Mr. Smith, the friend of Mr. Caldwell, testifies that he paid Mr. Carney the further sum of \$7,000 while at Topeka and just before the senatorial election, to meet Mr. Carney's alleged expenses while there, and through fear that Mr. Carney would, after all, withdraw from the arrangement and become a candidate.

Upon the check for this sum the money was drawn from the bank at Topeka in the evening by one T. J. Anderson, who testified that he gave it to Mr. Carney, and that he was ignorant of the consideration for which it was paid. Other testimony impeaches that of Mr. Anderson, and raises a strong presumption that he was engaged in the purchase of votes for Mr. Caldwell, and for which this \$7,000 was used, and that for his services he afterward received the sum of \$5,000 from Mr. Caldwell. Mr. Carney swears positively that he did not receive this \$7,000, or any part of it, but he indorsed the check, at the request of Mr. Smith, to enable him to procure the money from the bank; that the money was to be used in procuring votes for Mr. Caldwell, and that a package containing this money, as he believes, was placed by Mr. Anderson on a table in Mr. Carney's room, where it could be and was conveniently carried off by the parties for whom it was intended.

Taking all the testimony together, the probability is that Mr. Carney did not get the \$7,000, as no good reason was presented by Mr. Smith why, when Mr. Caldwell was holding Governor Carney's written promise not to be a candidate and Mr. Carney holding notes to be paid by Mr. Caldwell for \$15,000, a new arrangement should be made by which Mr. Smith should pay Mr. Carney \$7,000 more, making \$22,000 in all.

We now come to the consideration of the transaction with Mr. Sidney Clarke. He had been a member of Congress, had been a candidate for the United States Senate during the preceding canvass before the people, and many members of the legislature were elected upon personal pledges to vote for him for Senator. When the first vote was taken in the separate houses, Mr. Clarke received twenty-seven votes, the largest number given for any candidate but one; but the vote satisfied him and his friends that he could not be elected. An arrangement was concluded between Mr. Caldwell and a Mr. Stevens, a friend of Mr. Clarke, at a late hour in the night before the joint convention of the two houses, by which Mr. Caldwell was to pay Mr. Clarke's expenses in the canvass, estimated at from \$12,000 to \$15,000, and Mr. Clarke was to withdraw in favor of Mr. Caldwell. At a caucus of the friends of Mr. Clarke, held at 9 o'clock on the morning of the joint convention when Mr. Caldwell was elected, Mr. Clarke made a speech, and urged them to vote for Mr. Caldwell, and in joint convention his name was withdrawn, and all his friends but one voted for Mr. Caldwell. Subsequently in this city Mr. Clarke had several conferences with Mr. Caldwell, in which the latter promised to comply with his engagement with Mr. Stevens and pay Mr. Clarke's expenses, estimated at from twelve to fifteen thousand dollars, but never did. Mr. Clarke was unwilling to admit that he had made an agreement to transfer his friends to Mr. Caldwell in consideration of the latter's promise to pay this money, but taking all the testimony together the committee have no doubt that the transaction between him and Mr. Clarke was

as has been stated. Mr. Caldwell's subsequent refusal to pay the money to Mr. Clarke does not relieve the character of the transaction, and very probably resulted in the exposure of Mr. Caldwell and the institution of this examination.

There was nothing in the evidence to show that Mr. Clarke's expenses in the senatorial canvass, or in the preceding canvass before the people, amounted to half the sum which Mr. Caldwell was to pay him.

Mr. Carney and Mr. Clarke each testifies that Mr. Caldwell told them, after the election, that his election had cost him \$60,000. Mr. Anthony, the mayor of the city of Leavenworth, testified that Mr. Caldwell admitted to him that the election had cost him over \$60,000. Mr. Burke, editor of the Leavenworth Herald and a supporter of Mr. Caldwell in his canvass, testifies that after the election Mr. Caldwell told him that the money he had paid Mr. Carney was not more than 10 per cent. of the whole amount which the election had cost him; and on another occasion that the election had cost him more than twice his entire salary.

The committee have had much difficulty in tracing the money transactions; but the evidence shows that various sums, amounting to over \$50,000, were drawn under circumstances that make it probable they were used to procure Mr. Caldwell's election. The sum of \$15,000 paid to Mr. Carney has already been stated. The second sum of \$7,000, which Mr. Len. T. Smith swears was paid to Mr. Carney, and which Mr. Carney denies receiving, and testifies to circumstances showing it was used for the bribery of members of the legislature, has also been referred to. It is further shown that three or four days before the election took place Mr. Caldwell's agent went into the banking-house of Scott & Co., at Leavenworth, and drew the sum of \$10,000 upon Mr. Caldwell's check, for the avowed purpose of taking the money to Topeka by the train that morning, which was given as the reason for presenting the check before bank hours. Mr. Jacob Smith, banker at Topeka, testified that at 9 o'clock in the evening, before the election took place, Dr. Morris, of Leavenworth, a very active friend of Mr. Caldwell, drew \$5,000 from his bank, and that Judge Crozier, of Leavenworth, an influential supporter of Mr. Caldwell, and then at Topeka, laboring for his election, drew \$1,200 from the bank after banking-hours, at the request of Mr. Smith, which was handed over to Mr. Smith. The testimony left no doubt upon the minds of the committee that the bankers, who honored these different checks at Topeka after banking-hours, understood that the money was to be used for political purposes. The evidence further shows that Mr. T. J. Anderson subsequently received from Mr. Caldwell the sum of \$5,000 for his services in the election. A draft for \$10,000, drawn by the solicitor of the Kansas Pacific Railroad Company upon the treasurer of that company, was presented at the Kansas Valley Bank, of Topeka, by Mr. T. J. Anderson, on the 23d of January, the day before the election, and the money drawn upon it, under circumstances which, taken in connection with other testimony, make it probable that the money was used for Mr. Caldwell's election. The committee have no reason to believe that they have traced all the money that was used, and in the foregoing statement have taken no account of several small sums shown to have been paid by Mr. Caldwell for the expenses of his friends while at Topeka.

Mr. William Spriggs, a former treasurer of Kansas, testified in regard to a self-constituted committee of six of Mr. Caldwell's leading friends who met from time to time at Topeka, during the day and evening, for five or six days before the election, to confer and report progress in electioneering for Mr. Caldwell; that during the meetings of

this committee, it was reported by Mr. Smith what members of the legislature had been secured to vote for Mr. Caldwell; how much was offered to others, and how much was asked by others. We quote from his testimony:

We usually met at 10 o'clock in the morning. We had a roll of the senate and of the house and kept them, and we would compare notes, and then such a member of the committee would be sent that day or at such a time to see such members of the house, and such another one to see somebody else, whoever we thought would be the best man for that particular place, and then we would meet again at such another hour, and report what we had done and what success we had had, and in some quite a number of times, I do not know how many. In making the report and comparing notes there was one member of the committee would report; in calling over the names he would come to such and such a man and he would say, "We had better not count that man yet; that is under negotiation, and he is a little too high; I think I can bring him down some."

This witness testified to several interviews with Mr. Caldwell, and we quote from his testimony:

I will just tell you what Mr. Caldwell said to me about it. He asked me if I knew any members of the legislature that could be influenced by the use of money for their votes, and I told him that I knew two members, I believed, that had the reputation of having been influenced in their votes on former occasions.

And further on:

He said if I found any members that wanted a little money for votes, to send them to him and to Len. Smith.

Mr. Caldwell said there was another class of high-toned gentlemen there in the legislature that would not sell their votes, but they put it in this way: that they had been to a pretty heavy expense in carrying their election, and they would want their expenses paid, and if I met with any of that class to send them to him or to Len.

The testimony of Mr. Spriggs is very full, and shows that the canvass of Mr. Caldwell was thoroughly corrupt, and that money was the chief argument relied upon. Among many other things, he stated that T. J. Anderson told him that he had paid Mr. Crocker, a member of the house, \$1,000 for his vote; that Mr. Crocker afterward backed out, and handed the money over to a Mr. Carson to be returned to Mr. Anderson; that Carson got on the cars, went home, and kept the money. Carson was afterward called by the committee, and corroborated the statement, admitting that he had received the \$1,000 back from Mr. Crocker to be returned to Mr. Anderson, but that he had kept the money himself for his services to Mr. Caldwell. Mr. Carney testifies that, in an interview with Mr. Caldwell after the election, in which he was urging him to procure an appointment for one of Mr. Carney's friends who had voted for him, Mr. Caldwell took from his pocket a memorandum-book, and appeared to run over a list of names, and coming to the man referred to, said, "That man has been paid;" and Mr. Carney understood from his manner that he had in this memorandum-book a list of members with the sums paid to each; that Mr. Caldwell told him upon another occasion that he had paid Mr. Bayers the sum of \$2,500 for his vote and Mr. James F. Legate the sum of \$1,000 for his vote. Mr. Anthony also swears that in a conversation with Mr. Caldwell that gentleman admitted to him that he had paid \$2,500 for the vote of Mr. Bayers. There is much testimony showing that Len. T. Smith, Frank Drenning, James L. McDowell, George A. Smith, and T. J. Anderson, among the most active friends of Mr. Caldwell during the canvass, admitted at different times that they had offered money to members of the legislature to vote for Mr. Caldwell, in some cases specifying the members to whom it was offered and paid, and in other cases that offers had been made that had not been accepted, and that negotiations were

on hand with others which had not been completed. These men have denied before the committee all conversations and admissions of this character, and all payment of money to members, or offers to pay them, and several members of the legislature who were implicated have expressly denied that they received the money or that offers were made them.

Mr. Caldwell offered testimony showing that Mr. Carney had made threats to have him ousted from the Senate; that Mr. Anthony was hostile to him; that Mr. Burke had a lawsuit with him, growing out of money furnished to Mr. Burke about the time of the election; and to contradict several statements of Mr. Clarke. The most important contradictions of the testimony produced against Mr. Caldwell are made by members of the legislature, who were themselves implicated, or by the agents of Mr. Caldwell, who were directly charged with taking a part in these corrupt practices; and there are some contradictions made by witnesses against whom there is no cause of suspicion. But taking the testimony altogether, the committee cannot doubt that money was paid to some members of the legislature for their votes, and money promised to others which was not paid, and offered to others who did not accept it.

By the Constitution, each House of Congress is made the judge of the elections, returns, and qualifications of its members.

If a person elected to the Senate has not the constitutional qualifications, or if the election is invalid, by reason of fraud or corruption, the jurisdiction to examine and determine is expressly vested in the Senate.

Another clause of the Constitution authorizes the Senate to expel a member by a two-thirds vote. The causes for which a Senator may be expelled are not limited or defined, but rest in the sound discretion of the Senate.

It has been a subject of discussion in the committee whether the offenses of which they believe Mr. Caldwell to have been guilty should be punished by expulsion or go to the validity of his election, and a majority are of the opinion that they go to the validity of his election and had the effect to make it void. Wherefore the committee recommend to the Senate the adoption of the following resolution:

Resolved, That Alexander Caldwell was not duly and legally elected to a seat in the Senate of the United States by the legislature of the State of Kansas.

In conclusion the committee remark that, while Mr. Caldwell did things to procure his election which cannot be tolerated by the Senate, they believe he was as much sinned against as sinning. He was a novice in politics, and evidently in the hands of men who encouraged him in the belief that senatorial elections in Kansas were carried by the use of money.